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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,525	09/23/2004	Charles A. Haba	LC 0169 PUS	5524
36014	7590	01/11/2005	EXAMINER	
JOHN A. ARTZ ARTZ & ARTZ, P.C. 28333 TELEGRAPH ROAD, SUITE 250 SOUTHFIELD, MI 48034			ESTREMSKY, GARY WAYNE	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,525

Applicant(s)

HABA, CHARLES A.

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/23/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the relevant portions of the preferred embodiment corresponding to the following claim limitations must be shown or the feature(s) canceled from the claim(s).

the "storage compartment having a door" is not shown.

The particular arrangements with respect to the "compartment body" of claims 3-5 must be shown.

The relationship to an "automobile" relied upon for patentable distinction in claim 13 is not shown.

No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should

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be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,845,954 to Depue.

Depue '954 teaches Applicant's claim limitations including : a "storage compartment having a door" - the compartment of the prior art relied upon integrally includes its movable door, a "track member defining a generally heart-shaped track" - a path around part 72 is heart-shaped as described, "having a generally V-shaped notch" - the tapering portion at ref. Numeral 68 in Fig 4, "retaining section adjacent said V-shaped notch" - at 76, a "guide member" - 56, "*to facilitate positioning* said compartment door in the closed position when said guide member rests in the V-shaped notch" is broadly stated where it is examiner's position that functional recitation does not define any structure that

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can be relied upon to patentably define from the structure of the prior art. During the intended closing movement of 56 towards 76, should the operator of the latch allow 56 to rest at 68, it is fair to say the door is closed but furthermore, that the shape of the V-shape track portion of the prior art will aid or "facilitate" further movement toward the fully closed position. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. See MPEP 2114.

While the reference does not explicitly disclose use of "plastic", it would have been an obvious design choice for one of ordinary skill in the art at the time of the invention to form the latch from plastic to allow its shape to be made inexpensively and resist corrosion in use. Such modification would not otherwise affect function of the device which relies on its shape and not its particular material for its function. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As regards claim 2, the walls of the track of the prior art can inherently be forced to "flex out" under some predetermined amount of force, especially during catastrophic occurrence such as a car crash with which the present invention is

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particularly concerned. It is suggested that the geometry of the "channel" be better defined in the claim where examiner notes that prior art relied upon has a channel shape and size whereby it does not have to be deformed to allow passage of part 56.

As regards claim 3, part(s) 54 and/or 58 read on "connector". Limitation of "attached" is broad enough to include attachment via intermediary elements where the prior art structures are all attached to each other in the assembly. For example a tire is attached to a car even though it is only in direct connection or contact with the wheel, etc.. Regardless, it would have been an obvious design choice for one of ordinary skill in the art at the time of the invention to reverse the track and follower with respect to their mounting since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. One of ordinary skill in the art would have more than a reasonable expectation of success since reversal would not affect function of the latch.

As regards claim 6, portion at starting from 76, either upper or lower track away therefrom reads on "pathway C" and the other on "pathway D". Corresponding with such reading the first turn around 72 on that direction reads on "first" or "second corner" respectively with "pathway E" and "pathway B" adjacent thereto and defined by deviations (towards 78,80) from a tight path around 72, and finally with "pathway A" connecting "E" and "B" and completing a perimeter around 72. Geometry limitations are defined broad enough to read on paths in either CW or CCW directions around part 72 of the prior art.

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As regards claim 7, as read on the claim 6, examiner notes that prior art is in partially "open" position when part 56 is in "pathway A".

As regards claims 8-11, part 56 of the prior art is inherently capable of being made to follow the prescribed course where claim limitation does not define any particular structure that would require the path always be followed. Consequently, since the prior art is inherently capable of performing the recited function and no particular further structure is defined in the claimed invention that the prior art does not have, no patentable distinction has been pointed out. As regards claim 11, the end wall or either upper and lower walls of portion leading to 76 reads on "wall". It's noted that the invention is not a *process of using*, but is a *product* claim, defined by its structure. However, see MPEP 2173.05 (p) section II as regards single claim for *product* and *process of using*. While Applicant is free to use functional language to define the structure of the inventive product (so long as the claim scope does not become indefinite), functional recitations often result in broad limitations at best, and may not patentably define from prior art with similar structure.

Allowable Subject Matter

3. Claims 19 and 20 are allowed.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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U.S. Pat. No. 5,090,751 to Kobayashi.

U.S. Pat. No. 5,507,423 to Fischer.

U.S. Pat. No. 6,123,533 to Widulle.

U.S. Pat. No. 6,808,214 to Sato.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
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